UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,789	04/26/2001	JJ Garcia-Luna-Aceves	5543P002	3362

7590   04/05/2004

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EXAMINER
CHOUDHARY, ANITA

ART UNIT	PAPER NUMBER
2153	12

DATE MAILED: 04/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/843,789	GARCIA-LUNA-ACEVES ET AL.
	Examiner	Art Unit
	Anita Choudhary	2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _01 January 1934_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-34_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-34_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's request for reconsideration of the finality of the rejection of the last Office

action is persuasive and, therefore, the finality of that action is withdrawn. A new non-final

action has been made on claims 1-34.

Double Patenting

Claim 1 of this application conflict with claim 1 and 12 of Application No. 09810148. 37

CFR 1.78(b) provides that when two or more applications filed by the same applicant contain

conflicting claims, elimination of such claims from all but one application may be required in the

absence of good and sufficient reason for their retention during pendency in more than one

application. Applicant is required to either cancel the conflicting claims from all but one

application or maintain a clear line of demarcation between the applications. See MPEP § 822.

The nonstatutory double patenting rejection is based on a judicially created doctrine
grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or
improper timewise extension of the "right to exclude" granted by a patent and to prevent possible
harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.
Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686
F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA
1970);and,.*In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).
A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to
overcome an actual or provisional rejection based on a nonstatutory double patenting ground
provided the conflicting application or patent is shown to be commonly owned with this
application. See 37 CFR 1.130(b).
Effective January 1, 1994, a registered attorney or agent of record may sign a terminal
disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37
CFR 3.73(b).

Claim 1 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/810148. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

In referring to claim 1 of this application and claim 1 of Application 09/810148, claim 1 of this application does not state "an address of an information object repository being selected according to specified performance metrics". Nonetheless this feature is well known in the art, and would have been an obvious modification to the system disclosed by claim 1 of this application. That is, claim 1 of Application 09/810148 falls entirely within the scope of claim 1, or, in other words, claim 1 is anticipated by claim 1 of Application 09/810148. It is well known that a selected object repository has an address in order for client request to be routed to it. In addition, it is also well known to select a repository based on performance metrics, in order to provide efficient routing of network requests so as to avoid network congestion.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 12 of copending Application No. 09/810148 in view of Rune (US 6,304,913).

Claim 1 of the present application does not state, "mapping an address" to an information object repository that has a first best distance to the client address according to specified performance metrics. Nonetheless this feature is well known in the art, and would have

been an obvious modification to the system disclosed by claim 1 of this application. That is,

claim 12 of Application 09/810148 falls entirely within the scope of claim 1, or, in other words,

claim 1 is anticipated by claim 12 of Application 09/810148. It is well known to map client

address, by selecting an address to a first closest information object repository according to

performance metrics as shown by Rune (US 6,304,913). Rune shows selecting an IP address and

mapping the client to that IP address in accordance with the closest system determined by the

specified performance metrics in order to improve response times (see Rune col. 1 lines 43-51).

This is a <u>provisional</u> obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Jordan et al (US

6,438,652).

Jordan shows a system having a plurality of caching servers coopering to forward client

request for object to a least loaded server. Jordan shows:

Receiving a request for an information object from a client (col. 5 lines 54-56),

Determining, according to an information object repository selection procedure, which of

a number of information object repositories (cache servers) should service the request for the

information object without regard as to whether the information object is actually stored at the information object repository selected according to the selection procedure (col. 6 lines 50- col. 7 line 7, col. 7 line 66- col. 8 line 13).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jordan et al (US 4,438,652) in view of knowledge known to one of ordinary skill in the art.

Although Jordan shows substantial features of the claimed invention including assigning requests to new owners, Jordan does not explicitly show mapping a client address to an address of the selected repository. Nonetheless this feature is well known in the art, and would have been an obvious modification to the system disclosed by Jordan as evidenced by knowledge known to one of skill in the art.

One of ordinary skill would have realized that address information (IP address) is required to route a request to a destination. Given this feature, the desirability and advantages would have readily been recognized in order to send client request to a destination object via a network system.

In referring to claim 3 and 4, Jordan shows assignments/mappings are made according to specified performance metrics including load on the information object repository (col. 7 lines 7-11).

In referring to claim 5, Jordan shows information object repository selected from a number of addresses of information object repositories (plurality of cache servers, fig. 2b).

In referring to claim 6, Jordan shows instructing the selected information object repository to obtain a copy of the information object (col. 7 lines 5-7).

In referring to claim 7, Jordan shows determining which of a number of repositories should service a request comprises a direct cache selection process and a redirect cache selection process (col. 4 lines 23-35).

Claims 8-10, 21-28, 31, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jordan et al. in view of Rune (US 6,304,913).

Although Jordan shows substantial features of the claimed invention, Jordan does not show *using web server which received the request, to contact a Web router to obtain an address of a topologically close information object repository to the requesting client.* Nonetheless this feature is well known in the art, and would have been an obvious modification to the system disclosed by Jordan as evidenced by Rune.

In an analogous art, Rune shows a system used to selecting a closest server for a plurality of alternative servers. Rune shows:

Using a web server (157a or 156a) which received the request, to contact a Web router (105a) to obtain an address of a topologically close information object repository to the requesting client (fig. 2 210, fig. 7, col. 7 lines 7-25).

Given this feature, a person of ordinary skill in the art would have readily recognized the desirability and advantages of modifying the system shown by Jordan to employ the features shown by Rune in order to in order to improve response times (see Rune col. 1 lines 43-51).

In referring to claim 9, Rune shows receiving web server from the web router, an address of the topologically close information object repository (fig. 7, 706, fig. 8, 806).

In referring to claim 10, Rune shows returning from web server to the client a URL which contains the address of the topologically close repository (fig. 7 710, fig. 8, 808).

In referring to claim 21, Rune shows a local DNS cache selection process returning, from a web server (158b, 158e) which received the request from the client, a uniform resource locator containing a statically configured domain name (col. 4 lines 1-5).

In referring to claim 22, Rune shows local DNS cache selection process further comprises providing, from a DNS server (156e), the statically configured domain name to a Web router (105e) (col. 4 lines 29-37).

In referring to claim 23, Rune shows the local DNS cache selection process further comprises providing, from a DNS server (156e), the statically configured domain name to a web router (105e), an address of a topologically close repository (fig. 8, 806).

In referring to claim 24, Rune shows the DNS server, the address of the topologically close information object repository to the client (fig. 8, 808).

In referring to claim 25, Jordan shows direct cache selection process is combined with redirect cache selection process (col. 7 lines 23-35, fig. 4).

In referring to claim 26-28, Jordan shows direct cache selection process is combined with local and remote DNS cache selection process (col. 1 lines 8- col. 2 line 3).

In referring to claim 31, Jordan shows direct cache selection process is used for information objects that will be immediately loaded without user action (col. 7 lines 23-35).

In referring to claim 34, Rune shows local DNS cache selection process is used for information objects that will be loaded only after some user action (fig. 7, 710, wherein user must access the IP address upon receiving it).

Claims 11-15 and 29-30, 32, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jordan in view of Johnson et al (US 6,205,477).

In referring to claim 11, although Jordan shows substantial features of the claimed invention, Jordan does not show redirect cache selection comprising of redirecting Web router. Nonetheless this feature is well known in the art, and would have been an obvious modification to the system disclosed by Jordan as shown by Johnson.

In an analogous art Johnson shows a system for redirecting service requests among a plurality of services using portion metrics. Johnson discloses:

A redirect cache selection process comprising of contacting, using a web server (72) which received the client request from the client, a web router (82) to obtain an address of a redirecting web router which will service the request (col. 5 lines 39-53)

Given this feature, a person of ordinary skill in the art would have readily recognized the

desirability and advantages of modifying the system disclosed by Jordan, to employ the features

shown by Johnson, in order to provide dynamic and transparent scalable traffic load distribution

between multiple dispersed servers (see Johnson col. 5 lines 57-61).

In referring to claim 12, Johnson shows returning from web server (72) a URL that

contains address of redirecting web router (col. 10 lines 26-52, col. 11 lines 13-16).

In referring to claim 13, Johnson shows contacting the redirecting web router at the

address contained in the URL with the request for the information object (col. 11 lines 18-23).

In referring to claim 14, Johnson shows redirecting from the Web router (82), the client

to a topologically close server which will service the request for information (col. 5 lines 44-61).

In referring to claim 15, Johnson shows redirecting is accomplished using a HTTP

redirect (col. 10 lines 26-30).

In referring to claim 29, Johnson shows combining a redirect cache selection process

with remote DNS cache selection process (col. 10 line 26-52).

In referring to claim 30, Johnson shows combining a redirect cache selection process

(HTTP redirect mode) with remote and local DNS selection process (col. 6 lines 61- col. 7 line

3).

In referring to claim 32 and 33, Johnson shows a redirected cache selection process and a

remote DNS cache selection process is used for information objects that will be loaded only after

some user action (col. 8 lines 25-28, wherein user must access the IP address after it is received).

Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jordan in

view of Chauhan (EP 0959 601).

In referring to claim 16, although Jordan shows substantial features of the claimed invention including returning from a web server a statically configured domain name (col. 2 lines 32-39), Jordan does not show remote DNS cache selection process with redirector DNS server. Nonetheless this feature is well known in the art, and would have been an obvious modification to the system disclosed by Jordan, as evidenced by Chauhan.

In an analogous art, Chauhan shows a system for selecting a server from a plurality of mirrored sites. Chauhan discloses:

A remote cache selection process composes returning to client a statically configured domain name of a redirector DNS server (ONS) (col. 3 line 55- col. 4 line 4).

Given this feature, a person of ordinary skill in the art would have readily recognized the desirability and advantages of modifying the system disclosed by Jordan to employ the feature shown by Chauhan in order to optimize access and find the best route to a destination (see Chauhan col. 3 lines 49-52).

In referring to claim 17, Chauhan shows a system wherein remote DNS cache selection process further comprises resolving, at the redirector DNS server (ONS), the statically configured domain name to produce a resolved domain name (col. 4 line 4-13).

In referring to claim 18, Chauhan shows a system wherein remote DNS cache selection process further composes providing, from the redirector DNS server (ONS) the resolved domain name to a router (fig. 4 406a/b, col. 9 lines 1-11).

In referring to claim 19, Chauhan shows remote DNS cache selection process comprises receiving, at the redirector DNS server and from the Web router, an address of a topologically close site for the client (fig. 5 508, fig. 6 610)

In referring to claim 20, Chauhan shows providing from the redirector server the address

of the topologically close site to the client (fig. 5 506, fig. 6 618).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's
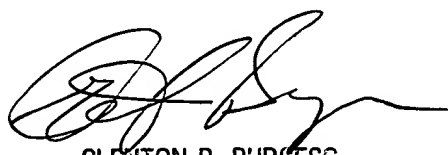
disclosure.

Dias et al (US 6,317,778) (see col. 4 lines 12-28).

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Anita Choudhary whose telephone number is (703) 305-5268.

The examiner can normally be reached on 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Glenton Burgess can be reached on (703) 305-4792. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

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AC
April 1, 2004

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